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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition Act
of 1992

MM Docket No. 92-259

Broadcast Signal Carriage Issues

**MOTION FOR LEAVE TO FILE
SUPPLEMENT TO PETITION FOR EMERGENCY RECONSIDERATION AND
REQUEST FOR MODIFICATION OF RULES OF YANKEE MICROWAVE, INC.**

Yankee Microwave, Inc. ("Yankee"), by its attorneys, hereby respectfully seeks leave to file its "Supplement To Petition For Emergency Reconsideration And Request For Modification Of Rules" ("Supplement") attached hereto for consideration in the above-captioned proceeding.

Yankee's Supplement addresses facts which came to Yankee's attention only after its Petition For Reconsideration was filed May 3, 1993. These facts provide a compelling illustration of the necessity for immediate action on the part of the Commission to modify its retransmission consent rules, and specifically the "superstation exemption." Grant of this motion and consideration of the Supplement would serve the public interest by permitting the Commission to consider the disastrous effect of the superstation exemption on the microwave industry, and the imposition of higher fees and poorer quality service on cable subscribers.

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WHEREFORE, good cause having been shown, Yankee respectfully requests that the Commission accept and consider the Supplement attached hereto.

Respectfully submitted,

YANKEE MICROWAVE, INC. /

By: 

John D. Pellegrin

By: 

Evan D. Carb

Its Attorney

Law Offices of
John D. Pellegrin, Chtd
1140 Connecticut Avenue, N.W.
Suite 606
Washington, D.C. 20036
(202) 293-3831

Date: November 16, 1993

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EMERGENCY RECONSIDERATION AND REQUEST FOR
MODIFICATION OF RULES OF YANKEE MICROWAVE, INC.**

On May 3, 1993, Yankee Microwave, Inc. ("Yankee"), by its attorneys, filed a "Petition For Emergency Reconsideration And Request For Modification Of Rules" in the above-referenced proceeding, specifically dealing with the "superstation exemption."¹ Yankee requested a narrow modification of that provision of the retransmission consent rules to provide for equal treatment of microwave (including cable TV-owned CARS) and satellite carriers which deliver superstation signals to cable systems.² Yankee's Petition was supplemented on May 6, 1993, June 14, 1993, June 18, 1993, July 30, 1993, and September 29, 1993. On August 18, 1993, on its own motion, the Commission issued a temporary 120 day waiver of its retransmission consent

¹ The "superstation exemption" contained within the Commission's current retransmission consent rules exempts from retransmission consent superstation signals obtained from a satellite carrier, but not from other distributors such as microwave carriers - like Yankee, or cable TV-owned CARS systems. See 47 C.F.R. § 76.64(b)(2).

² Yankee's Petition For Emergency Reconsideration was only intended to address microwave delivery of superstation signals to cable systems located beyond a television station's ADI.

rule for each of Yankee's cable system customers carrying WSBK-TV.³ Since Yankee's last supplement, additional matters have come to light which bear consideration in connection with Yankee's Petition For Emergency Reconsideration.⁴

Attached hereto as exhibit 1 is a letter from Superstation WSBK-TV to a Maine cable system, a copy of which was recently obtained by Yankee. While WSBK states that, in light of pending petitions for reconsideration before the FCC concerning the applicability of retransmission consent to superstations, it is unilaterally extending the deadline for negotiating a retransmission consent agreement with WSBK until July 6, 1994, it is quick to remind the system that WSBK "looks forward to negotiating a retransmission consent agreement with you during this extension period." It is Yankee's understanding that such letters were sent to each affected cable system.

Nonetheless, in spite of this recent development, Yankee received a letter from one of its Vermont cable system customers, informing Yankee that the system could no longer afford to wait

³ The FCC's intent was "...to provide the Commission opportunity to fully consider the specific issues raised [by Yankee's Petition For Reconsideration as well as others]" and "provide Yankee with an opportunity to secure retransmission consent from the affected superstation, WSBK-TV.." See Order, DA 93-1013, released August 18, 1993, at para. 3.

⁴ On May 3, 1993, simultaneously with the filing of its Petition For Emergency Reconsideration, Yankee filed a "Request For Stay" of the Commission's "superstation exemption" to the retransmission consent rules pending Commission action on Yankee's Petition For Emergency Reconsideration. A Petition for Reconsideration of the denial of Yankee's Stay Request is also currently pending before the Commission.

to reach a decision concerning the method by which it accepts delivery of superstation WSBK. (Attached hereto as Exhibit 2). In informing Yankee of its decision to drop the Yankee feed in favor of satellite delivery, the system noted, "if in fact, Yankee was not awarded approval we would incur a substantial increase in distribution fees in 1994 and beyond." Yankee has confirmed that prior to reaching this decision, the system was aware of both the FCC's temporary waiver, and WSBK's unilateral extension, as well as the likelihood that a decision on this matter would be forthcoming from the Commission prior to the mid-December expiration of Yankee's temporary waiver.

Yankee has continuously maintained that interim grants of **retransmission consent or temporary waivers of the rule are not sufficient**; a permanent parity/exemption must immediately be acknowledged by the FCC for systems receiving superstation signals by either microwave or CARS. As long as the retransmission burdens are placed on microwave carriers alone, thus raising the possibility of significant present or future costs to negotiate and obtain retransmission consent, cable operators will continue to abandon microwave in favor of the certainty of exemption from retransmission consent available via satellite-fed signals. This most recent cancellation letter supports Yankee's position.

Yankee again reminds the Commission that "time is of the essence." Yankee's petition for reconsideration was filed with

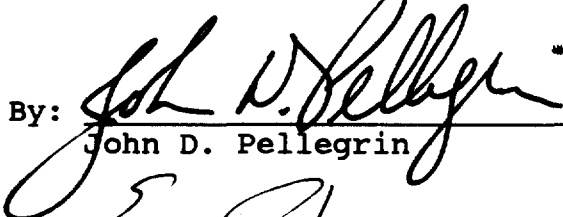
the FCC on May 3, 1993. In the nearly seven months since it first requested emergency relief from the Commission, Yankee has watched its clients slip away one by one. Yankee fears that if relief is not forthcoming immediately, any victory it may ultimately obtain will be a pyrrhic one at best.

In light of the foregoing, Yankee respectfully requests that the Commission act swiftly to revise the superstation exemption to provide for **equivalent treatment** of microwave and satellite carriers vis-a-vis cable systems' carriage of superstations beyond their ADIs.

Respectfully submitted,

YANKEE MICROWAVE, INC.

By:


John D. Pellegrin


Evan D. Carb

Its Attorneys

John D. Pellegrin, Chartered
1140 Connecticut Avenue, N.W.
Suite 606
Washington, D.C. 20036
(202) 293-3831

Date: November 16, 1993



CORPORATE OFFICE
630 PALISADE AVENUE
ENGLEWOOD CLIFFS, NEW JERSEY 07632

TEL: (201) 568-7720
FAX: (201) 568-6228

November 3, 1993

Mr. Bernard K. Karlen
Yankee Microwave, Inc.
31 Ward Drive
New Rochelle, NY 10804

Dear Mr. Karlen:

Please be advised, Vermont Cablevision Associates, dba Helicon Cablevision of Vermont, has elected affiliation with Eastern Microwave Inc. for distribution of WSBK programming. Therefore, effective 1/1/94, we will no longer require your services.

I must inform you Helicon's decision to switch from Yankee Microwave to Eastern Microwave was not an easy one. Unfortunately, we cannot afford to wait until December 16, 1993 to make this distribution decision. If, in fact, Yankee was not awarded approval we would incur a substantial increase in distribution fees in 1994 and beyond.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Baum". The signature is fluid and cursive, with the first name "David" being the most prominent.

David M. Baum
Vice President Marketing/Programming

cc: Gregory Kriser
Hal Berman
Tom Gimbel



WSBK-TV
33 Leo Birmingham Parkway
Boston, Massachusetts 02135
617-33-3838

September 24, 1993

Claudia Richards
GM - Cable TV of the Kennebunks
35 Beach Street
Kennebunk, ME 04043

Dear Claudia Richards:

As you are aware, under the provisions of the Cable Television Consumer Protection and Competition Act of 1992, retransmission agreement is to be effective by October 6, 1993, in order for both of us to enjoy continued carriage of WSBK, Boston, on your system.

However, there have been filed and remain pending Petitions for Reconsideration at the Federal Communications Commission which bring into question the applicability of the retransmission consent provisions to superstations. WSBK may, for certain purposes, be deemed a superstation under the Act, and until these matters are resolved by the Commission, it seems inappropriate from both our standpoints to attempt to structure a retransmission agreement.

In view of the foregoing, and because of business complexities affecting our situation which may necessitate additional time, in any event, to formulate an acceptable agreement between us, it has become evident that it is in the best interest of both of us, and the public we serve, that the deadline provisions of Section 76.64 of the Rules of the FCC be extended beyond October 6, 1993.

To facilitate resolution of these problems, this letter constitutes an extension of the October 6, 1993 deadline to July 6, 1994. It is understood and agreed that this extension will not be withdrawn by WSBK and that WSBK will continue to be carried by your cable system until July 6, 1994 in the same manner it is being carried on the date of this letter.

We would appreciate it if you would sign and return to us a copy of this extension agreement. Your authority to continue carrying WSBK beyond October 6, 1993 is limited by, and your continued carriage of WSBK past October 6, 1993 indicates your acceptance of, the express terms of this agreement.

We look forward to negotiating a retransmission consent agreement with you during this extension period.

Sincerely yours,

Gillett Communications of Boston Inc., the corporate parent of WSBK License, Inc.
Television Station WSBK, Boston, MA

By: 

Received and approved
(Cable TV Company)

By: _____

Date: _____

CERTIFICATE OF SERVICE

I, Julie Bonilla, a secretary in the law firm of John D. Pellegrin, Chartered do hereby certify that I have on this 16th day of November, 1993 transmitted a copy of the attached "Motion For Leave to File Supplement to Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc. " and "Supplement to Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc." by U.S. mail, postage prepaid to the following:

*The Honorable James H Quello,
Acting Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

*The Honorable Andrew C. Barrett,
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, DC 20554

*The Honorable Ervin S. Duggan,
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

*Renee Licht, Esq.
Acting General Counsel
Federal Communications Commission
1919 M Street, N.W.
Room 614
Washington, DC 20554

*William H. Johnson,
Deputy Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, DC 20554

*Alexandra Wilson
Special Assistant, Cable
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, DC 20554

*Lauren J. Belvin
Acting Director
Office of Legislative Affairs
Federal Communications Commission
1919 M Street, N.W.
Room 808
Washington, DC 20554

*Libby Beaty
Federal Communications Commission
2025 M Street, N.W.
Room 8316
Washington, DC 20554

Arthur H. Harding
Fleischman and Walsh
1400 16th Street, N.W.
Washington, D.C.
Counsel for EMI Communications Corp.

Vincent A. Pepper
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
Counsel for WSBK License, Inc.


Julie Bonilla

* By Hand